osition that the "proper law" to determine the validity of stipulations in an insurance contract, is the law of the place where the contract was made.[12] These decisions have all turned on the point that the contract was consummated where the statute was in force, and that the law of the place of making was the "proper law" to apply. Mr. Minor gives as a reason for this, the fact that performance of such a contract, that is, the payment of money due thereon, "will never be illegal."[13] This explanation, however, does not seem sound. The conditions under which the money is to be paid determine the legality of the payment. The question is one having to do with performance of the contract and the very one arising in the principal case. Is there a promise on the part of the company to perform under the circumstances, or is an exception to its general promise to pay to be implied where the death is by legal execution in which case the company is discharged of all obligation and there is performance in law? It is submitted that under the rules as applied to contracts in general the question should be decided by the law of the place of performance. In the principal case the place of making and the place of performance being Virginia, the result would be the same under either law, but the language used is misleading.

Having decided the "proper law" to be the law of the place of making, the place of making under the facts was undoubtedly Virginia. Wherever there is an express stipulation in the contract that it shall not take effect until payment of the first premium and the premium does not accompany the application, but the company sends the policy to its own agent, who delivers the same to the insured upon receipt of the first premium, from the latter, the contract will be deemed to have been made in the state where the policy was so delivered and the premium paid.[14]

E. H. B., Jr.

CONTRACTS—PROCUREMENT OF BREACH.—The much mooted question of the actionability of a procurement of a breach of contract arose in an interesting way in a recent case in North Dakota.[1] The plaintiff had contracted with A to find purchasers for A's land at a commission per acre of land sold. He had also contracted with B to pay B for procuring such purchasers for him. He alleged that

[12] Knights Templar & Mutual Life Indemnity Co. v. Berry, 50 Fed. 511 (1892); affirming 46 Fed. 439 (1891); National Union v. Marlow, 74 Fed. 775 (1896).

[13] Minor; Conflict of Laws, Sec. 170, n. 1.

[14] Equitable Life Assur. Soc. v. Clemens (*vide supra*); Mutual Life Ins. Co. v. Cohen (*vide supra*); Mutual Life Ins. Co. v. Hill (*vide supra*); Mutual Ben. Life Ins. Co. v. Robinson, 19 U. S. App. 266 (1893); Milliard v. Brayton, 177 Mass. 533 (1900); Cravers v. N. Y. Life Ins. Co., 178 U. S. 389 (1899).

[1] Sleeper v. Baker, 134 N. W. Rep. 716 (N. D. 1911).

A and B conspired by fraudulent devices, and with intent to defraud him, to deal directly with each other, ignoring his agency and cheating him out of moneys due on his contract with A. There was also an allegation that the purchasers had been procured by the plaintiff in performance of his contract. The court held that the allegations of the count against B did not state a cause of action. "The rule, as we see it, is substantially this; 'that an action cannot in general be maintained for inducing a third person to break his contract with the plaintiff, the consequence, after all, being only a broken contract for which the party to the contract may have his remedy by suing on it.' "[2]

The court correctly points out that the allegation of "conspiracy" has no bearing on the question of civil liability,[3] and that the case in its last analysis is one of the procurement of a breach of contract.

Before discussing the precise point involved in the principal case a mention of certain well-established rules of law in relation to rights of free business activity will be useful. No one questions that the boycott by violence or intimidation is a tort. A man has a right to have labor or custom flow freely to him and no violent interference with this right is legally justifiable.[4] The question presented by cases of boycott by economic pressure is a more difficult one for the law, for in such case the infringement of the plaintiff's right to deal is caused by the exercise of the same right by the defendant. In the typical case where A refuses to deal with B, if B deals with C, before the decision of Walker v. Cronin,[5] the American cases took the position that C's right to deal or refuse to deal, being an absolute right, A was not liable for any injury resulting from the exercise of that right;[6] and even later in England this doctrine of absolute rights prevailed.[7] The statement of law found in

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[2] This quotation of the court is from Chambers v. Baldwin, 91 Ky. at 126 (1891), where the court in that case quotes from Cooley on Torts, 2nd Ed., 581.

[3] In a very early English case, Savile v. Roberts, 1 Ld. Raym. 374, we find these words: "Though in the old books such actions are called conspiracies, yet they are nothing in fact but actions on the case." The Supreme Court of Kentucky, citing these words of Lord Holt, said: "It is clear, therefore, as well upon the authority of other cases, as that of Savile v. Roberts, that an act which if done by one alone, constitutes no ground of an action on the case, cannot be made the ground of such an action by alleging it to have been done by and through a conspiracy of several." Kimball v. Haman, 34 Ky. at 411 (1871). Cases which may possibly be considered *contra* are: Blindell v. Hagan, 54 Fed. 40 (1893); affirmed in Hagan v. Bindell, 56 Fed. 696, C. C. A. (1893); Elder v. Whitesides, 72 Fed. 724 (1895); City v. Produce Exchange, 48 L. R. A. 90 (1900).

[4] Yanett v. Taylor, Cro. James Rep. 567 (1620); Tarleton v. McYawley, 1 Peake, 205 (1793).

[5] 107 Mass. 555 (1871).

[6] Orr v. Insurance Co., 12 La. Ann. 255 (1857); Bowen v. Matheson, 96 Mass. 499 (1867).

[7] Allen v. Flood, A. C. 1 (1898); Huttely v. Simmons (1895), 67 L. J. Q. B. 213; but see Quinn v. Leatham (1901), A. C. 495.

Walker v. Cronin, *supra,* is an expression of the theory which is the foundation of the doctrine of relative rights. "Any act, the natural result of which is an injury to a particular person, knowingly done by one person, and resulting in injury to the other, renders the actor liable to the injured person, unless the actor has just cause and excuse." If, in the statement of the rule the want of just cause and excuse is called "malice," or "purely malicious motive," the rule, though perhaps clouded, is not altered. The application of this rule has resulted in a general trend of authority that a boycott by economic pressure is a tort.[8] Cases taking the opposite view [9] are explained, it is submitted, not by a difference in views of the law, but because of the comparative ease in finding just cause and excuse when "capital" boycotts "labor," owing to the different economic aspect of the case.

It must be noted that this doctrine has led the courts to hold many acts to be torts, which could not be enjoined, however inadequate the legal remedy, because such injunction would of necessity be an order for personal service or a prohibition of the free expression of ideas. The question of equitable remedy, therefore, has no proper bearing on the question of the actionability of acts of the character under discussion.

If, then, the fact that the defendant's acts could not be stopped in equity does not prevent their amounting to a tort at law, it would seem that a boycott by persuasion might, under Walker v. Cronin, *supra,* be held a tort if no justification could be found for it. However, to support an action under the facts of the principal case, it is not necessary to go to the length of so holding, for in the principal case there is a pre-existing contract the breach of which is procured, a fact lacking in the ordinary case of boycott.

On the question presented in the principal case the authority is in conflict. The rule sustaining the action undoubtedly had its origin in the English Statute of Labourers [10] and the early law with regard to the seduction of servants, and the conflict seems, in the main, to be, whether it should be extended so as to apply to any case which presents the facts necessary to found an action on the case under the rule of Walker v. Cronin, *supra.* It has, beyond a doubt, been thus extended in England in the now famous cases of Lumley v. Gye,[11] and Bowen v. Hall,[12] although Lord Coleridge dissented in both of those decisions on the ground that such actions ought not to be allowed where the relation of master and servant does not exist. Walker v. Cronin was the first case to follow Lumley v. Gye in America. This case, and Haskins v. Royster,[13] which

[8] Moores v. Bricklayers' Union, 23 Ohio W. L. B. 48 (1899).

[9] Raycroft v. Taynor, 68 Vt. 219 (1896).

[10] 23 Edw. III.

[11] 2 Ell. & Bl. 228 (1853).

[12] L. R. 6 Q. B. Div. 333 (1881).

[13] 70 N. C. 601 (1874).

followed it, adopted the extended doctrine in their language,[14] but were, in their facts, cases of contracts of employment. Three years later the North Carolina court held that the reasons for the decision of Haskins v. Royster "cover every case where one person persuades another to break any contract with a third person."[15] Many cases [16] in America can be found which, it is submitted, go to this length, unless they are susceptible of the distinction sought to be applied to them in the principal case. That distinction seems to be this: That to the general rule that an action lies for the procurement of a breach on contract there are two exceptions: first, where the contract is one of employment, *vide supra;* and second, "where a person has been procured against his will or contrary to his purpose, by coercion or deception of another to break his contract." This second exception is fully discussed in Chambers v. Baldwin [17] and Boyson v. Thorn,[18] and adopted by the courts deciding those cases. If it is sound, it can, perhaps, be made to explain all the cases which have extended the original rule, and will, of course, exclude the principal case.

It is submitted that the exception is not sound. Force and fraud are not the only unjustifiable means of procuring a breach of contract. Mere persuasion may come equally within the rule of Walker v. Cronin. Moreover, it does not seem necessary that the breach be against the will of the party breaking the contract in order to render it the proximate result of the defendant's acts.[19] Such a requisite could properly be made if the question were one of criminal liability.

It is submitted that there was no justification for the defendant's acts in the principal case. It is certainly not a case of altruistic persuasion, nor even one of ordinary competition, as the defendant was, by his contract with the plaintiff, at least morally bound not to take the action he took. It is true that a strong group of authorities can be arrayed in support of the principal case; but it is believed that the contrary view is reached by courts which endeavor to keep the law abreast of modern economic advancement.

F. L. B.

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[14] Rodman, J., in Haskins v. Royster, 70 N. C. 601 (1874), quoting from Walker v. Cronin, *supra:* "We are satisfied that it is founded upon the legal right derived from the contract and not merely upon the relation of master and servant, and that it applies to all contracts of employment if not to contracts of every description."

[15] Jones v. Stanley, 76 N. C. 355 (1877).

[16] Rice v. Manley, 66 N. Y., 82 (1876); Benton v. Pratt, 2 Wend. 385; Green v. Button, 2 Cromp. M. & R. 707.

[17] Chambers v. Baldwin, 1 Ky. at 127 (1891).

[18] 98 Cal. 578 (1893).

[19] Bowen v. Hall, L. R. 6 Q. B. Div. 333 (1881).